

1 M. ANDREW WOODMANSEE (CA SBN 201780)  
mawoodmansee@mofo.com  
2 JEFFREY M. DAVID (CA SBN 265503)  
jdavid@mofo.com  
3 MARY PRENDERGAST (CA SBN 272737)  
mprendergast@mofo.com  
4 MORRISON & FOERSTER LLP  
12531 High Bluff Drive  
5 San Diego, California 92130-2040  
Telephone: 858.720.5100

6 DAVID LOY (CA SBN 229235)  
davidloy@aclusandiego.org  
7 SEAN RIORDAN (CA SBN 255752)  
sriordan@aclusandiego.org  
8 ACLU FOUNDATION OF SAN DIEGO &  
9 IMPERIAL COUNTIES  
P.O. Box 87131  
10 San Diego, California 92138-7131  
Telephone: 619.232.2121

11 Attorneys for Plaintiffs  
12 RAY ASKINS AND CHRISTIAN RAMIREZ

13 UNITED STATES DISTRICT COURT  
14 SOUTHERN DISTRICT OF CALIFORNIA  
15

16 RAY ASKINS and CHRISTIAN RAMIREZ,

17 Plaintiffs,

18 v.  
19

20 UNITED STATES DEPARTMENT OF  
HOMELAND SECURITY; DAVID V.  
AGUILAR, Deputy Commissioner of United  
21 States Customs and Border Protection;  
CALEXICO PORT DIRECTOR BILLY  
22 WHITFORD; SAN YSIDRO PORT  
DIRECTOR FRANK JARAMILLO;  
23 UNITED STATES CUSTOMS & BORDER  
PROTECTION OFFICERS DOES 1 through  
24 15; and DOES 16 through 50,

25 Defendants.  
26  
27  
28

Case No. **'12CV2600 W BLM**

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF AND  
DAMAGES**

**JURY TRIAL DEMANDED**

1 Plaintiffs Ray Askins and Christian Ramirez (collectively, “Plaintiffs”) bring this First and  
 2 Fourth Amendment action against the U.S. Department of Homeland Security, U.S. Customs and  
 3 Border Protection Deputy Commissioner David V. Aguilar, Calexico Port Director Billy  
 4 Whitford, San Ysidro Port Director Frank Jaramillo, U.S. Customs and Border Protection  
 5 Officers Does 1-15, and Defendants Does 16-50 (collectively, “Defendants”), and allege as  
 6 follows.

### 7 **NATURE OF THE ACTION**

8 1. This is a civil action to remedy violations of Plaintiffs’ First and Fourth  
 9 Amendment rights by officers of U.S. Customs and Border Protection (“CBP”), an agency within  
 10 the Department of Homeland Security.

11 2. The First Amendment right to freedom of speech includes the right to take  
 12 photographs and make video recordings of matters such as U.S. ports of entry and federal law  
 13 enforcement officers engaged in the public discharge of their duties. The U.S. Department of  
 14 Justice (“DOJ”) agreed in a letter providing guidance for potential settlement negotiations in  
 15 *Christopher Sharp v. Baltimore City Police Department, et. al.*, No. 1:11-cv-02888-BEL (D.  
 16 Md.), advising that “[r]ecording governmental officers engaged in public duties is a form of  
 17 speech through which private individuals may gather and disseminate information of public  
 18 concern, including the conduct of law enforcement officers.” (Exhibit A, DOJ Guidance Letter  
 19 dated May 14, 2012, at 2 (citations omitted).) DOJ further advised that “the justification for this  
 20 right is firmly rooted in long-standing First Amendment principles” and that “[t]he right to  
 21 ‘[g]ather[] information about government officials in a form that can readily be disseminated to  
 22 others serves a cardinal First Amendment interest in protecting and promoting ‘the free discussion  
 23 of governmental affairs.’” (*Id.* at 3 (citations omitted).)

24 3. CBP has an unconstitutional policy and practice of prohibiting the use of cameras  
 25 and video recording devices at or near CBP-controlled facilities, including U.S. ports of entry,  
 26 without the CBP’s prior approval. Acting pursuant to this policy and practice, CBP officers  
 27 violated Plaintiffs’ First Amendment rights by directing Plaintiffs to cease taking photographs  
 28 and erasing the photographs they did take of CBP personnel and buildings at U.S. ports of entry.

4. Furthermore, in the course of violating Plaintiffs' free speech rights, CBP officers also violated Plaintiffs' rights under the Fourth Amendment. These officers did so pursuant to an official policy and/or a longstanding practice of searching and/or seizing individuals, without any legally sufficient justification, when the individuals use cameras and video recording devices at or near such facilities without prior approval from CBP. Specifically, Officers Does 1-15 subjected Mr. Askins to the use of excessive force and to an unlawful search and seizure. Other CBP officers subjected Mr. Ramirez to an unlawful search and seizure.

5. Plaintiffs' cases are not unique. CBP officers frequently employ these policies and/or practices to deter individuals from documenting potential misconduct by CBP officers and to destroy evidence of such potential misconduct. For example, CBP officers confronted individuals who captured video footage of the killing of Anastasio Hernandez Rojas by CBP officers at the San Ysidro port of entry on May, 28, 2010, and forced the individuals to erase that footage. In another example at the San Ysidro port of entry, on May 4, 2012, CBP officers confronted Kevin Murphy, who captured video footage of several CBP officers pointing weapons at family members in a van, and forced Mr. Murphy to erase the footage by threatening to smash Mr. Murphy's phone if he did not do so.

6. To remedy the First and Fourth Amendment violations, Plaintiffs seek injunctive and declaratory relief against all defendants, and Plaintiff Askins seeks damages against Officers Does 1-15.

## THE PARTIES

7. Plaintiffs Ray Askins and Christian Ramirez are, and at all relevant times were, citizens of the United States.

8. Defendant U.S. Department of Homeland Security (“DHS”) is an executive department of the United States. U.S. Customs and Border Protection is an agency within DHS.

9. Defendant David V. Aguilar is the Deputy Commissioner of the CBP.

10. Officers Does 1-15 (the “Doe Officers”) are, and at all relevant times were, officers employed by the CBP, and were acting under color of authority of the laws of the United States. The true names of the Doe Officers, as well as the true names of Defendants Does 16-50

1 (collectively, with the Doe Officers, the “Doe Defendants”) are unknown to Plaintiffs, who  
2 therefore sue the Doe Defendants by fictitious names. Plaintiffs reserve the right to amend this  
3 Complaint to further identify the Doe Defendants when Plaintiffs have ascertained these  
4 defendants’ true names and capacities.

5 11. All defendants are sued in their official capacities for declaratory and injunctive  
6 relief. Mr. Askins also sues Officers Does 1-15 in their individual capacities for damages.

7 12. Injunctive relief is sought against each defendant as well as each defendant’s  
8 agents, assistants, successors, employees, attorneys, and all persons acting in concert or  
9 cooperation with any of them or at the direction or under the control of any of them.

### 10 **JURISDICTION AND VENUE**

11 13. The Court has jurisdiction under 28 U.S.C. § 1331 because Defendants are acting  
12 on behalf of the United States and this action arises under the First and Fourth Amendments to the  
13 United States Constitution.

14 14. The Court may grant declaratory and injunctive relief for the constitutional  
15 violations alleged here pursuant to 5 U.S.C. § 702, which waives the sovereign immunity of the  
16 United States for relief other than money damages; 28 U.S.C. § 2201; and/or Federal Rules of  
17 Civil Procedure 57 and 65. Additionally, pursuant to *Bivens v. Six Unknown Federal Narcotics*  
18 *Agents*, 403 U.S. 388 (1971), the Court may award damages against the Doe Officers, who are  
19 sued in their individual capacities.

20 15. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (e),  
21 because the events that give rise to this action occurred within this district, and because one or  
22 more defendants reside in this district.

23 16. The Court has personal jurisdiction over Officers Does 1-15, all of whom, on  
24 information and belief, are residents of the state of California.

### 25 **FACTS**

#### 26 **PLAINTIFF ASKINS**

27 17. Mr. Askins is a U.S. citizen living primarily in Mexicali, Mexico. He travels  
28 frequently to the United States, often to attend meetings or to visit his home in Lake Arrowhead,

1 California. He maintains and contributes to a blog that primarily addresses environmental issues  
2 and human rights abuses in the U.S.-Mexico border region. This work involves extensive  
3 research, investigation, and analysis of CBP border activities. Additionally, this work has  
4 culminated in numerous reports prepared by Mr. Askins and submitted to U.S. Representative  
5 Bob Filner, whose congressional district includes the entire California-Mexico border.

6 18. Mr. Askins's claims arise from his attempt to take photographs of the Calexico-  
7 Mexicali port of entry for a presentation at a conference entitled "Health Impacts of Border  
8 Crossings," held on May 4, 2012, in San Ysidro, California. According to its website, the  
9 conference was funded by the Southwest Consortium on Environmental Research and Policy.  
10 The website also states: "This binational conference focuses on local health impacts of the U.S.-  
11 Mexico border. The emphasis is on avenues for reduction of exposures to traffic pollutants  
12 experienced by people crossing the border at the U.S.-Mexico Ports of Entry, workers and the  
13 community on both sides of the border. The conference includes participation of researchers and  
14 stakeholders from the San Diego-Tijuana region and other areas along the U.S.-Mexico border  
15 with similar issues." See <http://www.healthyborders2012.com/#!/about> (attached as Exhibit B to  
16 this Complaint). Furthermore, the conference materials state that, as an outcome of the  
17 conference, "[a] White Paper is to be sent to the Air Quality and Environmental Health Task  
18 Forces of the EPA Border 2012 initiative as well as local and state agencies and regional  
19 stakeholders along the border."

20 19. In connection with his conference presentation, Mr. Askins wished to photograph  
21 the secondary inspection area of the Calexico-Mexicali port of entry to demonstrate that the CBP  
22 does not make full and proper use of this inspection area, leading to longer delays at the border  
23 crossing and, accordingly, to more pollution arising from emissions of vehicles waiting in line to  
24 cross the border or enter the port of entry.

25 20. On or about April 18, 2012, Mr. Askins contacted CBP Officer John Campos by  
26 phone and requested permission to take three or four photographs inside the secondary inspection  
27 area at the Calexico port of entry the next day. Officer Campos said that this would be  
28 inconvenient, but otherwise did not object to the request.

21. On or about April 19, 2012, Mr. Askins called Officer Campos to follow up. When Officer Campos did not answer, Mr. Askins left a voicemail message stating that, instead of taking photographs inside the building, Mr. Askins would stand on the street in Calexico and take photographs of the exit of the secondary inspection area.

22. On or about April 19, 2012, at approximately 3:21 p.m., Mr. Askins was standing on the shoulder of a public street in Calexico, California, approximately 50-100 feet from the exit from the secondary inspection area at the Calexico port of entry. From this vantage point, Mr. Askins took three or four photographs of the exit of the secondary inspection area, including the following photograph:



23. While taking these photographs, Mr. Askins was not engaged in any form of commercial speech or activity. Mr. Askins took these photographs for political and/or other non-commercial purposes.

24. Additionally, when taking these photographs, Mr. Askins was not engaged in the act of crossing the border. Mr. Askins was outside the port of entry on the U.S. side of the border when taking the photographs.

25. Shortly after he took the photos, a number of male CBP officers (Officers Does 1-15) approached Mr. Askins. One or two of the officers (Officer Doe 1 and/or Officer Doe 2)

1 demanded that Mr. Askins delete the photos. When Mr. Askins stated that he would not do so,  
2 Officer Doe 1 and/or Officer Doe 2 stated that they would smash the camera if Mr. Askins did not  
3 delete the photos. Mr. Askins again declined to delete the photos, explaining that they were his  
4 property. One or more officers (Officers Does 1-15) then handcuffed Mr. Askins from behind  
5 and took his camera, passport, car keys, and hat.

6 26. Throughout this encounter, the CBP officers—particularly Officer Doe 1—spoke  
7 to Mr. Askins in an aggressive and threatening manner, despite the fact that Mr. Askins at no  
8 point posed a threat to the safety of the officers and at no point actively resisted arrest.  
9 Furthermore, Mr. Askins committed no crime and took no actions giving rise to a reasonable  
10 suspicion or probable cause that he had committed or was about to commit a crime.

11 27. After Mr. Askins was handcuffed and his possessions taken, Officer Doe 1  
12 forcefully led Mr. Askins into a small room inside the secondary inspection area, holding Mr.  
13 Askins's right arm in a tight grip that caused significant pain and bruising on the inside of Mr.  
14 Askins's arm. The officer told Mr. Askins to sit down. Mr. Askins was not free to leave the  
15 room.

16 28. After about 20 minutes, Officer Doe 1 led Mr. Askins to a separate room where he  
17 subjected Mr. Askins to an invasive and embarrassing physical search. During the search, Mr.  
18 Askins remained clothed and Officer Doe 1 used his hands to pat Mr. Askins's entire body. Mr.  
19 Askins felt that he was being groped, and experienced particular discomfort when Officer Doe 1  
20 unnecessarily squeezed and touched Mr. Askins's groin area several times.

21 29. One or more CBP officers (Officers Does 1-15) then told Mr. Askins that he was  
22 free to go and returned his belongings. Officer Doe 4 escorted him to the exit. From the moment  
23 CBP officers first detained Mr. Askins to the moment they told him he was free to go,  
24 approximately 25-35 minutes elapsed. The officers had no warrant or other justification for the  
25 search and/or seizure of Mr. Askins's person or property.

26 30. When Mr. Askins later scrolled through the pictures on his digital camera, he  
27 discovered that all but one of the photographs he just had taken of the port of entry had been  
28 deleted.

1           31.     On or about April 19, 2012, Mr. Askins sent a letter of complaint regarding the  
2 incident to Port Director Billy Whitford. Director Whitford responded in writing. In his response  
3 (attached as Exhibit C to this Complaint), Director Whitford stated: “In response to the issues  
4 raised in your complaint, the area in question is currently under the jurisdiction of GSA [(General  
5 Services Administration)] and CBP. CBP security policies prohibit visitors at CBP-controlled  
6 facilities from using cameras and video recording devices without the prior approval from the  
7 senior CBP official (Port Director or designee).”

8           32.     Mr. Askins hopes to continue to photograph the Calexico port of entry, San Ysidro  
9 port of entry, and other ports of entry in the future, to document air pollution and human rights  
10 abuses, but the policies, practices, and actions of CBP and its officers chill, prevent, hinder, and  
11 deter him from doing so.

12                                   **PLAINTIFF RAMIREZ**

13           33.     Mr. Ramirez is a U.S. citizen living in San Diego, California. He crosses the U.S.-  
14 Mexico border approximately three to four times per month, often to visit family members living  
15 in Mexico.

16           34.     Mr. Ramirez works as the Human Rights Director at Alliance San Diego. Alliance  
17 San Diego is a non-profit, non-partisan organization whose stated mission is to provide a means  
18 for diverse individuals to share information, collaborate on issues and mobilize for change in the  
19 pursuit of social justice, especially in low-income communities and communities of color. The  
20 organization pursues this mission through targeted civic engagement programs and strategic  
21 coalitions that focus on specific issues and policy reforms, including issues related to immigrant  
22 rights at the U.S.-Mexico border.

23           35.     As a part of his job, Mr. Ramirez regularly visits the U.S.-Mexico border to  
24 observe law enforcement activity and monitor human rights issues. He does this not only for  
25 work but also out of a sense of personal responsibility as a lifelong member of the border  
26 community. He has long believed that it is important to document law enforcement activity at the  
27 border in order to address and hopefully to prevent the abuse of human rights.



1           36. Mr. Ramirez's claims arise from his experience crossing the border at the San  
2 Ysidro port of entry on Father's Day 2010. On or about that day—June 20, 2010—Mr. Ramirez  
3 and his wife crossed the border into Mexico to visit his father. They parked on the U.S. side of  
4 the border and walked into Mexico through the pedestrian entrance at San Ysidro.

5           37. After a late lunch, Mr. Ramirez and his wife returned to the United States. They  
6 passed through primary inspection at the San Ysidro port of entry without incident. They then  
7 crossed a pedestrian bridge that passes over, among other things, the southbound lanes of  
8 Interstate 5.

9           38. While crossing this pedestrian bridge, Mr. Ramirez noticed that, at a southbound  
10 security checkpoint below him, which was staffed by CBP officers, women were being inspected  
11 and patted down by male CBP officers. Mr. Ramirez's wife commented that the officers  
12 appeared to be pulling aside only women for inspection.

13           39. Mr. Ramirez observed the checkpoint for approximately ten to 15 minutes. During  
14 that time he took approximately ten pictures using his cell phone camera, out of concern that the  
15 CBP officers might have been acting inappropriately.

16           40. While taking the photographs at issue on or about June 20, 2010, Mr. Ramirez was  
17 not engaged in any form of commercial speech or activity. Mr. Ramirez took these photographs  
18 for political and/or other non-commercial purposes.

19           41. Additionally, when taking these photographs, Mr. Ramirez was not engaged in the  
20 act of crossing the border. Mr. Ramirez was in the United States when taking the photographs.

21           42. While observing the checkpoint, Mr. Ramirez and his wife were approached by  
22 two men who appeared to be private security officers. One of the private security officers asked  
23 for Mr. Ramirez's personal identification documents. Mr. Ramirez explained that he and his wife  
24 had already passed through inspection and declined to hand over his documents again.

25           43. One of the private security officers then ordered Mr. Ramirez to stop taking  
26 photographs. Mr. Ramirez refused and took a picture of the private security officer. Acting  
27 aggressively, the private security officer attempted to grab Mr. Ramirez. Mr. Ramirez stopped  
28 taking photographs and said "let's go" to his wife.

1           44.     Mr. Ramirez and his wife then began to descend the pedestrian bridge, now  
2 followed by the private security officers, whom Mr. Ramirez heard make a radio call for backup.  
3 At the bottom of the bridge, approximately five to seven CBP officers were waiting. They asked  
4 whether and why Mr. Ramirez had taken any photographs. Mr. Ramirez responded that he had  
5 taken photographs because he had witnessed what he believed to be inappropriate activity by  
6 CBP officers at the checkpoint—namely, the patting down of women by male officers.

7           45.     The CBP officers at the bottom of the bridge then asked Mr. Ramirez to turn over  
8 his phone. Mr. Ramirez refused and explained that he was willing only to show them the  
9 photographs.

10          46.     An officer in plain clothes then confronted Mr. Ramirez and asked for Mr.  
11 Ramirez's personal identification documents. The officer later identified himself as a U.S.  
12 Immigration and Customs Enforcement ("ICE") agent. Mr. Ramirez refused to turn over his  
13 documents and explained that they had already been inspected. The ICE officer said to Mr.  
14 Ramirez, "Give me one other reason to take you down." The officer took Mr. Ramirez's and Mr.  
15 Ramirez's wife's passports out of Mr. Ramirez's shirt pocket and went to a nearby office.

16          47.     A CBP officer then took Mr. Ramirez's phone and scrolled through the photos,  
17 making a comment about Mr. Ramirez's personal pictures. When Mr. Ramirez later looked  
18 through the contents of his phone, he discovered that the CBP officer who took his phone had  
19 deleted all of the photos that Mr. Ramirez had just taken at the CBP checkpoint.

20          48.     Throughout this encounter, officers spoke to Mr. Ramirez in an aggressive and  
21 threatening manner, despite the fact that Mr. Ramirez at no point posed a threat to the safety of  
22 the officers and at no point actively resisted arrest. Furthermore, Mr. Ramirez committed no  
23 crime and took no actions giving rise to a reasonable suspicion or probable cause that he had  
24 committed or was about to commit a crime.

25          49.     Approximately ten to 15 minutes after the ICE agent had taken the passports  
26 belonging to Mr. Ramirez and Mr. Ramirez's wife, the ICE agent returned with the documents  
27 and gave them back to Mr. Ramirez. Mr. Ramirez and his wife were then allowed to continue on  
28 their way.

1           50.     During the entire encounter at the bottom of the bridge, which lasted  
 2 approximately ten to 15 minutes from the time Mr. Ramirez and his wife reached the bottom of  
 3 the bridge and were confronted by the CBP officers, to the time they were allowed to go, Mr.  
 4 Ramirez and his wife were separated from each other by CBP officers. The officers essentially  
 5 created a buffer area around Mr. Ramirez while they questioned him and took his cell phone.  
 6 Neither Mr. Ramirez nor his wife felt free to leave at any point during that time. The officers had  
 7 no warrant or other justification for the search and/or seizure of Mr. Ramirez's person or  
 8 property.

9           51.     Mr. Ramirez hopes to continue to photograph the San Ysidro port of entry and  
 10 other ports of entry in the future, in order to document human rights abuses and to monitor  
 11 activity in his border community. Indeed, he considers documenting such border issues to be a  
 12 fundamental piece of his identity and part of his life experience. But the policies, practices, and  
 13 actions of CBP and its officers chill, prevent, hinder, and deter him from doing so.

#### **CLAIMS FOR RELIEF**

##### **CLAIM ONE** **(VIOLATION OF THE FIRST AMENDMENT—FREEDOM OF SPEECH—** **BY PLAINTIFF ASKINS AGAINST DEFENDANTS DEPARTMENT OF HOMELAND** **SECURITY, COMMISSIONER AGUILAR, AND OFFICERS DOES 1-15)**

18           52.     Plaintiff Askins incorporates by reference and re-alleges each preceding paragraph  
 19 as if fully set forth herein.

20           53.     Mr. Askins has the right to freedom of speech, which includes the right to take  
 21 photographs and make video recordings of matters such as U.S. ports of entry and federal law  
 22 enforcement officers engaged in the public discharge of their duties.

23           54.     By engaging in the above-described conduct on or about April 19, 2012, Officer  
 24 Does 1-15 violated Mr. Askins's First Amendment right to freedom of speech.

25           55.     In violating Mr. Askins's First Amendment rights, Officers Does 1-15 acted  
 26 pursuant to an expressly adopted official CBP policy and/or a longstanding CBP practice of  
 27 prohibiting the use of cameras and video recording devices at CBP-controlled facilities, including  
 28 U.S. ports of entry, without the CBP's prior approval. This policy and/or practice prevents,

1 restricts and/or hinders the ability of persons such as Plaintiffs to take photographs and make  
 2 video recordings of matters such as U.S. ports of entry and federal law enforcement officers  
 3 engaged in the public discharge of their duties. This CBP policy and/or practice continues to be  
 4 an impermissible prior restraint on speech and to chill, deter, and infringe Mr. Askins's First  
 5 Amendment right to freedom of speech.

6 56. Furthermore, the violation of Mr. Askins's First Amendment rights by Officers  
 7 Does 1-15 caused Mr. Askins to suffer harm. As a result, Mr. Askins is entitled to monetary  
 8 damages from Officers Does 1-15 pursuant to the *Bivens* doctrine.

9 57. The violation of Mr. Askins's First Amendment rights by Officer Does 1-15 was  
 10 also oppressive, malicious, and done with a willful and conscious disregard of Mr. Askins's  
 11 rights, justifying an award of punitive damages.

12 **CLAIM TWO**  
 13 **(VIOLATION OF THE FIRST AMENDMENT—FREEDOM OF SPEECH—**  
 14 **BY PLAINTIFF RAMIREZ AGAINST DEFENDANTS**  
**DEPARTMENT OF HOMELAND SECURITY AND COMMISSIONER AGUILAR)**

15 58. Plaintiff Ramirez incorporates by reference and re-alleges each preceding  
 16 paragraph as if fully set forth herein.

17 59. Mr. Ramirez has the right to freedom of speech, which includes the right to take  
 18 photographs and make video recordings of matters such as U.S. ports of entry and federal law  
 19 enforcement officers engaged in the public discharge of their duties.

20 60. By engaging in the above-described conduct on or about June 20, 2010, the CBP  
 21 violated Mr. Ramirez's First Amendment right to freedom of speech.

22 61. In violating Mr. Ramirez's First Amendment rights, the CBP officers acted  
 23 pursuant to an expressly adopted official CBP policy and/or a longstanding CBP practice of  
 24 prohibiting the use of cameras and video recording devices at CBP-controlled facilities, including  
 25 U.S. ports of entry, without the CBP's prior approval. This policy and/or practice prevents,  
 26 restricts and/or hinders the ability of persons such as Plaintiffs to take photographs and make  
 27 video recordings of matters such as U.S. ports of entry and federal law enforcement officers  
 28 engaged in the public discharge of their duties. This CBP policy and/or practice continues to be

1 an impermissible prior restraint on speech and to chill, deter, and infringe Mr. Ramirez's First  
2 Amendment right to freedom of speech.

3 **CLAIM THREE**  
4 **(VIOLATION OF THE FOURTH AMENDMENT—UNLAWFUL SEARCH AND**  
5 **SEIZURE—BY PLAINTIFF ASKINS AGAINST DEFENDANTS DEPARTMENT OF**  
6 **HOMELAND SECURITY, COMMISSIONER AGUILAR, AND OFFICERS DOES 1-15)**

6 62. Plaintiff Askins incorporates by reference and re-alleges each preceding paragraph  
7 as if fully set forth herein.

8 63. By engaging in the above-described conduct on or about April 19, 2012, CBP  
9 Officers Does 1-15 searched and seized Mr. Askins's person and/or property without a warrant,  
10 probable cause, reasonable suspicion, consent, exigent circumstances, or any other justification,  
11 in violation of Mr. Askins's Fourth Amendment right to freedom from unreasonable search and  
12 seizure.

13 64. In violating Mr. Askins's Fourth Amendment rights, the CBP officers acted  
14 pursuant to an expressly adopted official CBP policy and/or a longstanding CBP practice of  
15 searching and seizing individuals without a warrant, probable cause, reasonable suspicion,  
16 consent, exigent circumstances, or any other justification, when the individuals use cameras and  
17 video recording devices at or near CBP-controlled facilities, including U.S. ports of entry, without  
18 the CBP's prior approval.

19 65. Furthermore, the conduct of Officers Does 1-15 caused Mr. Askins to suffer harm.  
20 As a result, Mr. Askins is entitled to monetary damages from Officers Does 1-15 pursuant to the  
21 *Bivens* doctrine.

22 66. The unreasonable search and seizure by Officer Does 1-15 was also oppressive,  
23 malicious, and done with a willful and conscious disregard of Mr. Askins's rights and safety,  
24 justifying an award of punitive damages.

**CLAIM FOUR**  
**(VIOLATION OF THE FOURTH AMENDMENT—EXCESSIVE USE OF FORCE—BY  
 PLAINTIFF ASKINS AGAINST DEFENDANTS DEPARTMENT OF HOMELAND  
 SECURITY, COMMISSIONER AGUILAR, AND OFFICERS DOES 1-15)**

67. Plaintiff Askins incorporates by reference and re-alleges each preceding paragraph as if fully set forth herein.

68. By engaging in the above-described conduct on or about April 19, 2012, including gripping Mr. Askins's right arm with such force as to cause significant pain and bruising, without provocation or justification, Officer Doe 1 violated Mr. Askins's Fourth Amendment right to freedom from the use of excessive force.

69. Furthermore, the conduct of Officer Doe 1 caused Mr. Askins to suffer harm. As a result, Mr. Askins is entitled to monetary damages from Officer Doe 1 pursuant to the *Bivens* doctrine.

70. Officer Doe 1's excessive use of force was also oppressive, malicious, and done with a willful and conscious disregard of Mr. Askins's rights and safety, justifying an award of punitive damages.

**CLAIM FIVE**  
**(VIOLATION OF THE FOURTH AMENDMENT—UNLAWFUL SEARCH AND  
 SEIZURE—BY PLAINTIFF RAMIREZ AGAINST DEFENDANTS DEPARTMENT OF  
 HOMELAND SECURITY AND COMMISSIONER AGUILAR)**

71. Plaintiff Ramirez incorporates by reference and re-alleges each preceding paragraph as if fully set forth herein.

72. By engaging in the above-described conduct on or about June 20, 2010, the CBP officers searched and seized Mr. Ramirez's person and/or property without a warrant, probable cause, reasonable suspicion, consent, exigent circumstances, or any other justification, in violation of Mr. Ramirez's Fourth Amendment right to freedom from unreasonable search and seizure.

73. In violating Mr. Ramirez's Fourth Amendment rights, the CBP officers acted pursuant to an expressly adopted official CBP policy and/or a longstanding CBP practice of searching and seizing individuals without a warrant, probable cause, reasonable suspicion,

1 consent, exigent circumstances, or any other justification, when the individuals use cameras and  
2 video recording devices at or near CBP-controlled facilities, including U.S. ports of entry, without  
3 the CBP's prior approval.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs respectfully request that the Court:

6 A. Preliminarily and permanently enjoin all Defendants, their successors, agents,  
7 servants and employees, and anyone acting in concert with Defendants, from preventing,  
8 impeding, or otherwise interfering with Plaintiffs' First Amendment free speech rights to take  
9 photographs and make video recordings of U.S. ports of entry and federal law enforcement  
10 officers engaged in the public discharge of their duties;

11 B. Preliminarily and permanently enjoin all Defendants, their successors, agents,  
12 servants and employees, and anyone acting in concert with Defendants, from violating Plaintiffs'  
13 Fourth Amendment rights by searching and seizing Plaintiffs and/or Plaintiffs' cameras or video  
14 recording devices without a warrant, probable cause, reasonable suspicion, consent, exigent  
15 circumstances, or any other justification, when Plaintiffs use cameras and video recording devices  
16 at or near CBP-controlled facilities, including U.S. ports of entry.

17 C. Declare Defendants' conduct to be unlawful;

18 D. Award Plaintiff Askins general, compensatory, statutory, nominal, and/or punitive  
19 damages against CBP Officers Does 1-15 for the violations of his First and Fourth Amendment  
20 rights, in an amount to be proven at trial;

21 E. Award Plaintiffs' costs, including reasonable attorneys' fees; and

22 F. Award such other relief as the Court deems proper.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

**JURY DEMAND**

Plaintiffs hereby demand a trial by jury for all issues so triable.

Dated: October 24, 2012

MORRISON & FOERSTER LLP

By: s/M. Andrew Woodmansee  
M. ANDREW WOODMANSEE  
MAWoodmansee@mofo.com

Attorneys for Plaintiffs  
RAY ASKINS and CHRISTIAN RAMIREZ